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Viewing cable 06BEIRUT2034, MGLE01: UNIIIC AND THE DEFENSE'S CASE FOR JAILED

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SUBJECT: MGLE01: UNIIIC AND THE DEFENSE'S CASE FOR JAILED
GENERAL JAMIL AS-SAYYID

REF: BEIRUT 1823

Classified By: Ambassador Jeffrey Feltman. Reason:
Sections 1.4 (b) and (d).

SUMMARY

¶1. (S) Reftel reports that UNIIIC Commissioner Serge Brammertz is deeply worried that the evidence against the four jailed Lebanese generals, suspected of complicity in the Hariri assassination, may not be strong enough to justify their continued detention. Release of the generals would have a seismic effect on the political scene in Lebanon. General Jamil as-Sayyid, former head of the Surete Generale, has been held, like the other three generals, since August 30, 2005. As-Sayyid is represented by an attorney who is requesting as-Sayyid's immediate release from prison. His arguments are based on procedural and substantive grounds that are discussed below. This attorney also told us that he would be approaching PM Siniora, Sa'ad Hariri, Walid Jumblatt, and Amine Gemayel with the offer that if as-Sayyid

were to be released from prison, as-Sayyid would respond cooperatively by departing the country within 24 hours. As-Sayyid's attorney's largely procedural arguments may or may not be meaningful elements in an eventual trial before an international tribunal. The real question, by our own informal legal analysis, is whether the UNIIIC and Lebanese prosecutors have gathered sufficient evidence to justify the continued detention of as-Sayyid and the three other generals. Brammertz's concern about the eroding basis for continued detentions prompts us to report these legal issues in greater detail. End Summary.

THE ARRESTS

12. (C) On August 30, the Lebanese judicial authorities issued a restraining order authorizing the detention of four generals at the headquarters of the UN International Independent Investigation Commission (UNIIIC) of four generals. The four, who continue to be held in Lebanese facilities, were General Jamil as-Sayyid, former Director General of the Surete Generale; General Ali Hajj, former Director General of the Internal Security Forces, General Raymond Azar, former head of military intelligence for the Lebanese Armed Forces; and General Mustapha Hamdan, who was at the time of his arrest still serving as director of the Presidential Guard. They were, a few days later on September 3, subjected to an arrest warrant issued by the Lebanese examining magistrate Elias Eid. Eid was acting at least in part on the recommendation of then-UNIIIC Commissioner Detlev Mehlis. Mehlis had also conveyed the arrest recommendation to Lebanese Prosecutor General Said Mirza. The four generals have been held in Lebanese detention ever since.

AS-SAYYID'S CASE

13. (S) Upon Jamil as-Sayyid's detention in August, he engaged as his lawyer Akram Azoury, a respected and able attorney known for an interest in human rights issues. Azoury has since submitted to the UNIIIC about ten legal memoranda on as-Sayyid's behalf, as well as related requests to the UN SYG. Azoury has met discreetly with the DCM on several occasions during the past six months to apprise the U.S., as a permanent member of the UNSC, of his case for as-Sayyid. The most recent meeting took place on June 16. Azoury also meets with other P-5 missions in Beirut and the UN SYG's personal representative Geir Pedersen. Azoury has shared with us most of his legal memoranda. His latest memo, dated May 23, was addressed to Serge Brammertz as UNIIIC Commissioner. The memo makes the points discussed in paras 4-6 below.

14. (S) Azoury wants as-Sayyid released from detention. To that end, he requests from Brammertz three actions:

-- That the UNIIIC issue an opinion favorable to the release of as-Sayyid.

-- That written notification of this opinion be transmitted by the UNIIIC to Lebanese judicial authorities.

-- That the Commission formally retract its early September 2005 (arrest) recommendation to the Lebanese examining magistrate, in order to allow the Lebanese judiciary to determine for its own part whether Jamil as-Sayyid should continue to be incarcerated.

15. (S) UNIIIC Commissioner Brammertz has answered this memorandum with a terse but significant reply. Brammertz, in a June 6 reply to Azoury, which Azoury has also passed to us, said that, "I regret to tell you that I cannot follow up your memorandum, in as much as the points that you raise rest exclusively within the jurisdiction of Lebanese judicial authorities. For this reason, I have transmitted your memorandum to the Prosecutor General." Azoury explained this reply to DCM as signifying the following: While Mehlis in September had recommended to the Lebanese authorities that

they arrest the four generals, Brammertz is suggesting that in his analysis of his role as a Commissioner, such a recommendation for arrest would have been beyond his authority. Accordingly, Brammertz is suggesting now that a retraction, by him, of the Mehlis September arrest recommendation would also be an act beyond his authority. Therefore, he passes the issues surrounding the detention of Jamil as-Sayyid wholly over to Lebanese authorities. He possibly implies these questions should have been adjudicated in the first place without any suggestions or prompting from UNIIIC Commissioner Mehlis.

16. (S) Azoury, in his latest memorandum of May 23, as well as previous memoranda, lays out a case for why Jamil as-Sayyid should be released from detention. The five principal arguments that Azoury makes are as follows:

(a) The original arrest and detention of Jamil as-Sayyid violated normal procedural practices and was essentially a political act. UNIIIC Commissioner Mehlis exceeded his authority in recommending arrest, the Lebanese judicial authorities examined the evidence only briefly before issuing the arrest warrant, and as-Sayyid was initially interrogated without the presence of a lawyer. As Azoury told us orally, "the policeman (Mehlis) was acting like a court, and the court was not asserting its proper responsibilities."

(b) Jamil as-Sayyid has never been permitted to confront his accusers, nor the witnesses of who have provided evidence against him, nor any of the evidence itself. The most important of these witnesses would be the Syrian national Zouhair as-Saddik.

(c) UNIIIC, and perhaps Lebanese government interrogators, have persistently confronted as-Sayyid with hypothetical versions of how the Hariri assassination was planned and executed. In each case, they say, "You had to have known something about this. . . ." This practice gives additional weight to the argument that as-Sayyid's detention is based more on politics than evidence of participation in a crime.

(d) The controversial "black box" issue, which revolved around a Surete Generale slush fund of about USD 30 million for special operations including possibly the Hariri assassination, has been satisfactorily resolved. The "black box" was legitimately authorized, and there are written records to confirm the justifiable expenditures from the "black box."

(e) UN investigators have used illegal and unprofessional techniques in their interrogation of as-Sayyid. Here, Azoury gives special attention to former UNIIIC chief investigator Gerhard Lehmann. He describes, in some detail, Lehmann's use of the game "prisoner's dilemma" with as-Sayyid. In this classic gambit, Lehmann offered special treatment to as-Sayyid if as-Sayyid would reveal more to him than the other three detained generals, and told as-Sayyid that he (Lehmann) was making the same offer to the other three. (Comment: We do not know whether "prisoner's dilemma" violates international legal norms, but Azoury treats it as though it does. End Comment.)

THE OUTLOOK -----

17. (S) That Brammertz is worried about the GOL's continued ability to detain the four generals is cause for us to worry as well. Azoury's largely procedural issues discussed immediately above may or may not be meaningful elements in an eventual trial before an international tribunal. The real question, by our own informal legal analysis, is whether the UNIIIC and Lebanese prosecutors have gathered sufficient evidence to justify the continued detention of as-Sayyid and the three other generals. Brammertz, in his June 6 reply to Azoury, begs this question by referring it entirely to the Lebanese judicial authorities. Azoury, in his five arguments above, does not really reach the issue of the weight of the evidence, since he has maintained that as-Sayyid never had

anything to do with the Hariri assassination, including foreknowledge that something might be up.

¶8. (S) An interesting aspect to all this is that Azoury informed DCM on June 16 that he, as as-Sayyid's attorney, would soon be approaching Lebanese PM Fouad Siniora, Future Movement leader Sa'ad Hariri, Druze leader Walid Jumblatt, and Phalange party leader Amine Gemayel to make a proposal. The proposal would be that if Jamil as-Sayyid were released from jail, he would depart the country within 24 hours. The incentive to Lebanon's political leaders, presumably, would be that they would have as-Sayyid out of their way soon, rather running the risk of having him released for lack of evidence and then mobilizing his pro-Syrian friends against them all in Lebanon. We note here that the four political figures mentioned by Azoury are members of the pro-independence March 14 coalition. We will follow up quietly with them for their views on as-Sayyid and the other generals.

FURTHER ELEMENTS

¶9. (S) Azoury, in the course of our June 16 meeting with him, made several other comments about the unfolding UNIIIC investigation. Among them, he said that Jamil as-Sayyid, as head of Lebanon's Surete Generale, had never met Syrian chief of military intelligence Asef Shawqat, an object of UNIIIC interest. Azoury, for his part, said that he had never met Jamil as-Sayyid until taking on his case. He reported that he meets three times per week with as-Sayyid. He reported that controversial former chief investigator Gerhard Lehmann continues to travel to Lebanon, and disclaimed any knowledge of what he is up to, but said he had seen Lehmann in a Beirut restaurant this past month.

¶10. (S) The Syrian national Zouhair Ibn Mohamed Said Saddik remains an enigma. Former UNIIIC Commissioner Mehlis appears to have drawn in part on Saddik's testimony in writing the October 2005 conclusions about Syrian and Lebanese intelligence complicity in the Hariri murder. Azoury said that Saddik had approached the UNIIIC on his own accord, suggesting that he was a Syrian intelligence set-up. Saddik was then sent to France, which has no extradition treaty with Lebanon or Syria, thus protecting him. There was a conspiracy, of which Saddik was a small part, and one of his roles was to bring about the incarceration of General as-Sayyid. The Syrians are nervous, especially about the information that might have been provided to the UNIIIC by the Syrian witness Houssam Houssam in Damascus. Meanwhile, Azoury wondered, who is paying Saddik the USD 2,000 or so per month that it must cost him to live in France. Azoury thought that 99.5 percent of what Saddik told the UNIIIC was probably false or contrived, but the .5 percent was real, and Brammertz is trying to find that .5 percent.

COMMENT

¶11. (S) Azoury, despite his objections to as-Sayyid's detention as a "political" matter, is advocating a purely political solution to his client's problem, approaching Jumblatt, Hariri, and Gemayel, none of whom have any judicial authority. It is not even clear to us what authority Prime Minister Siniora has to make a decision to release as-Sayyid. From our perspective of advocating judicial independence, this would probably not be a step in the right direction.

¶12. (S) Comment, continued: In any case, Jumblatt, Siniora, Hariri, and Gemayel could be expected to ask whether as-Sayyid -- like his longtime ally, Hizballah -- might be highly selective in how he chose to uphold his end of the bargain, much as Hizballah has been in the National Dialogue talks. They might wonder how quickly he would leave following his release -- Azoury's promise of departure within 24 hours notwithstanding -- and how long he would stay away. In the end, they might well prefer the possibility of as-Sayyid being released in the future to the certainty of

him being released now.

¶13. (S) Comment, continued: However, in two separate meetings last fall, senior justice Ralph Riache, President of Lebanon's Criminal Court and the Ministry of Justice's official contact with the UNIIIC investigation, told emboff that the government of Lebanon has the legal authority to hold individuals suspected in crimes of state indefinitely. Riache mentioned this clause on two separate occasions, in direct response to emboff questions about the legal status of as-Sayyid and the three other incarcerated security chiefs. While the Embassy does not claim expert legal opinion on Lebanese penal codes, it appeared during our last meetings with Riache that the MOJ felt no obligation to release as-Sayyid and no reservations about holding him indefinitely.

¶14. (S/NF) Comment, continued: Besides having a seismic effect on the political situation here, as-Sayyid's release might well have security implications for us as a diplomatic mission. If as-Sayyid gets out, he is going to be angry and seeking payback, and he is going to see the United States as at least partly responsible for his interrogation by the UNIIIC and his long months in detention. A released as-Sayyid might conceivably quickly reconstitute a network of contacts and clients in the security apparatus, his task made easier and his influence enhanced by the public perception of a pro-Syrian resurgence that his release would cause. Working with Hizballah and the Syrian regime, as-Sayyid -- despite his close cooperation with us over the years before Hariri's assassination -- could potentially employ that network, when the right time came, to do us harm. End comment.
FELTMAN